IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 292 OF 2002

Arun Patel .. Petitioner
V/s
The Union of India & Ors. .. Respondents

Mr.Homi Patel with Mr.A.K.Sharma for the Petitioner.
Mr.H.V.Mehta with Mr.Y.Bhate & Mr Mishra for Respondents.

CORAM: S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.

DATE : 17.02.2005.

P.C.:

1. Rule. Rule is made returnable forthwith. The learned Counsel for the Respondents waives service. By consent taken up for hearing. Heard the learned Counsel for the parties.

2. By this Petition the Petitioner challenges the order dated 30th May, 2001 passed by the CEGAT. The brief facts are that it is the allegation that the Petitioner had collected the duty but did not deposit it with the Respondents in time. The challenge is with regard to the levy of penalty by the Commissioner of Central Excise. It appears that, before the Commissioner of Central Excise, number of adjournments were sought by the Petitioner on the ground of illeness of the Advocate and on other grounds, and finally the exparte order was passed by the Commissioner of Cetral Excise. Thereafter, the Petitioner had approached the CEGAT. As averred in paragraph No.8 of the Petition, even before the CEGAT, the Petitioner’s Advocate and Counsel could not remain present on 30th May, 2001. The Petitioner

who was present on that date, seems to have requested for an adjournment before the CEGAT, however the adjournment was declined and the order was passed.

3. The conduct of the Petitioner does not inspire confidence, however, in view of the fact that the Petitioner could not be properly represented before the CEGAT, we are inclined to set aside the order dated 30th May, 2001 passed by the CEGAT. Hence, the order dated 30th May, 2001 passed by the CEGAT is quashed and set aside on the condition of Petitioner paying a sum of Rs.10,000/- as costs to the Commissioner of Central Excise, Mumbai-II (Respondent No.2.) within a period of two weeks from today. The CEGAT shall hear the Appeal strictly on its own merits in accordance with law, as expeditiously as possible. Rule is made absolute in the above terms.

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